

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CAROLYN R. KERN,)	8:04CV566
)	
Plaintiff,)	
)	
vs.)	MEMORANDUM
)	AND ORDER
JO ANNE B. BARNHART,)	
Commissioner of the)	
Social Security Administration,)	
)	
Defendant.)	

Plaintiff filed a complaint to review and set aside a decision under the Social Security Act on November 8, 2004. After answering the complaint and obtaining two extensions of time to respond to Plaintiff's brief, the Commissioner on June 20, 2005, filed a motion to remand pursuant to sentence four of 42 U.S.C. § 405(g). Plaintiff states that she "offers no resistance" to the motion. (Filing 19).

The Commissioner's motion states that remand is appropriate because:

The ALJ found that Plaintiff had the severe impairments of fibromyalgia, headaches, obesity, and hepatitis C, but she did not discuss whether Plaintiff's alleged pain and fatigue could be symptoms of one or more of these impairments. The ALJ did not indicate what weight, if any, she gave to the assessment of Plaintiff's treating physician, Dr. Franklin (Tr. 235-37), and she adopted the assessment of Dr. Winkler who had only examined Plaintiff's records (Tr. 345-60).

Upon receiving the Court's order of remand, the Appeals Council has agreed to remand Plaintiff's case for further consideration by a different ALJ. The ALJ will reevaluate the medical evidence, reevaluate Plaintiff's credibility, and reconsider Plaintiff's residual functional capacity. It may

be necessary to obtain additional vocational expert testimony. Plaintiff will have the opportunity to provide additional testimony and to update the medical evidence.

(Filing 18.)

Because the court construes the Commissioner's motion as a concession of error at the administrative level which brings into question the decision below, and because the Commissioner specifically concedes that this matter should be remanded pursuant to sentence four of 42 U.S.C. § 405(g), I shall reverse and remand this matter to the Commissioner for proper consideration and reevaluation of the evidence, as stated in the motion.

Accordingly,

IT IS ORDERED that:

1. The Commissioner's motion to remand (filing 18) is granted;
2. This matter is reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) in order to allow the Commissioner to reevaluate Plaintiff's claim; and
3. Judgment shall be entered by separate document.

July 1, 2005

BY THE COURT:

s/ Richard G. Kopf
United States District Judge